

IN THE UNITED STATES BANKRUPTCY COURT
Southern District of New York

IN RE: Sears Holding Corporation, et al

CASE NO.: 18-23538 (RDD)

Debtor _____ /

CHAPTER 11
(Jointly administered)

MOTION FOR RELIEF FROM STAY

COMES NOW, an Injured Party / Plaintiff Claimant, named Samantha Parchment (hereinafter also referred to as “Movant”), by and through undersigned counsel and pursuant to 11 U.S.C. §§ 361, 362, 363 and Bankruptcy Rules 4001, 6007, requests an order conditioning, modifying, or dissolving the automatic stay imposed by 11 U.S.C. § 362 of the Bankruptcy Code:

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.
2. The Movant is the Claimant in this matter and has standing to bring this Motion by virtue of fact that she is the injured party, who suffered said injuries by negligence of the Debtor.
3. Seeking to recover damages arising from injuries sustained in motor vehicle accident caused by negligence of the Debtor, the Movant filed suit in Miami-Dade Circuit Court, Florida, same being in the Eleventh Judicial Circuit of Florida, on September 14th, 2018.
4. The lawsuit (filed against Debtor’s subsidiary and joint filer, A&E Factory Service, LLC, with case No. 2018-031356 CA-01), alleged the negligent entrustment of a motor vehicle to a careless driver and liability by principle of *respondeat superior*, which negligent actions caused the Movant / Claimant to suffer serious injury and damages, in excess of \$15,000.00.
5. Details of the Complaint alleged that the Debtor’s Bailee / Driver, caused both vehicles to collide and crash into the Plaintiff’s motor car, totally destroying the Movant / Claimant’s motor car and causing the Movant / Claimant to sustain serious bodily injuries.
6. The Claimant averred that as a matter of law, the circumstances of this collision clearly showed that the Debtor and its driver were solely at fault for its occurrence. Claimant alleges that as a direct and proximate result of the Debtor’s negligent entrustment of its motor

vehicle to a careless driver and liability by principle of *respondeat superior*, Claimant suffered substantial damages, bodily injury, pain and suffering, disability or disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and / or nursing care and treatment, loss of earnings, loss of ability to earn money, and / or aggravation of a previously existing condition. Further, these said losses are either permanent or continuing and the Claimant will continue to suffer these losses into the foreseeable future.

8. The Claimant was required to hire the services of an attorney at law to prosecute this matter, after notice of Claimant's damages was made to the Debtor who failed to avail itself of ample opportunity afforded to make the Claimant whole, without necessity for Court action. The Debtor was thus liable for Claimant's attorney's fees incurred therein, per *F.S.* §57.105.
9. Compounding its recalcitrance, the Debtor then failed to file any response after service of process and the Court entered a Default against debtor, who then filed a bankruptcy petition and Claimant is now left with no ability to continue pursuing her claim against the Debtor.

WHEREFORE, the Claimant / Movant prays for an Order from the Court, granting Movant relief from the automatic stay of §362 of the Bankruptcy Code to permit Claimant / Movant to proceed under law and for any other and further relief to which the Claimant / Movant may be entitled.

[The undersigned attorney hereby certifies that he has been duly admitted to the Bar of the Southern District of Florida and that he is in compliance with the additional qualifications required to practice in this Court, as are set forth in Local Rule 2090-1(A)]

Respectfully submitted

/S/ Don D.G. James, Esq

Don D.G. James, Esquire
Florida Bar No. 140661
Law Office of Don James, P.A.
Attorney for the Claimant / Movant
2655 Lejeune Road, Suite 516
Coral Gables, Florida 33134
Telephone: (305) 441-6666